

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DERBY INDUSTRIES, LLC <sup>1/</sup>	Employer
and	
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	Petitioner
and	
DERBY INDUSTRIES, INC. <sup>1/</sup>	Party-in-Interest

**DECISION AND DIRECTION OF ELECTION**

Case 33-RC-4493

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>2/</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3/</sup>
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4/</sup>

All full-time and regular part-time production and maintenance employees, including truck driver(s), plant clerical employees, shipping and receiving department employees, material handlers, assemblers, lead assemblers and quality control inspectors employed by the Employer at its 1033 Enterprise Avenue, Galesburg, Illinois facility; but excluding office clerical employees, managerial employees, temporary service employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>5/</sup> Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO.

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).<sup>6/</sup> Accordingly, it is hereby directed that within 7 days of the date of this Decision *two* copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Region, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before **April 17, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **April 24, 2000**.

Dated April 10, 2000  
at: Peoria, Illinois  
/s/ Joy S. Kessler  
Joy S. Kessler  
Acting Regional Director, Region 33

1/ The Employer's and the Party-in-Interest's names appear as amended at the hearing.

2/ I have carefully considered the record evidence, the parties' statements on the record, arguments on the record and the brief filed by the Parties.

3/ The Party-in-Interest, Derby Industries, Inc., a Kentucky corporation, is engaged in the operation of a die cutting facility located at 1693 U.S. Highway 164, Galesburg, Illinois. During the past twelve months, a representative period of time, it purchased and received goods and/or materials valued in excess of \$50,000 directly from sources located outside the State of Illinois.

The Employer, Derby Industries, LLC, a Delaware corporation, is engaged in the operation of an assembly facility located at 1033 Enterprise Avenue, Galesburg, Illinois where it assembles refrigeration parts. During the past twelve months, a representative period of time, it purchased and received goods and/or services valued in excess of \$50,000 directly from sources located outside the State of Illinois.

As indicated above, the Employer, Derby Industries, LLC and the Party-in-Interest, Derby Industries, Inc. are separate corporations. The Employer and the Party-in-Interest take the position that for the purposes of collective bargaining they constitute a single employer. The Petitioner does not take a contrary position.

Briefly, Derby Industries, Inc. operated a business that consisted of both die cut and assembly operations in Galesburg, Illinois. In 1997, the die cut portion of the business was moved to a location approximately six and one-half miles at 1693 Highway 164 (hereinafter referred to as the die cut facility). The assembly portion of the business remained at 1033 Enterprise Avenue (hereinafter referred to as the assembly facility). Generally, the die cut facility manufactures refrigeration parts which are trucked to the assembly facility where the parts are assembled and the assembled parts are shipped to the companies' customer, Maytag Refrigeration. Maytag is essentially the companies' sole

customer with the assembly facility doing 100% of its work for Maytag and the die cut doing all but one-half of one percent of its work involving Maytag.

On or about January 31, 2000, Derby Industries, LLC bought the assets of Derby Industries, Inc.'s assembly business on Enterprise Avenue and is currently operating the assembly operation at that location. While Derby Industries, Inc. maintains ownership of the die cut facility, it intends to sell the die cut facility to Derby Industries, LLC as well. At the time of the hearing, there was an agreement between the two corporations by which Derby Industries, LLC will buy and operate the die cut facility.

At this point, I find that for the purposes of the Act, Derby Enterprises, LLC and Derby Enterprises, Inc. are operating as a single employer. In reaching this finding, I first note that while the two entities have distinct ownership, they share common ownership through Raymond Lloyd who owns Derby Enterprises, Inc. and holds the preferred stock in Derby Enterprises, LLC. He is a common officer to both enterprises. Lloyd also owns the real estate for both the assembly and the die cut facilities.

The two enterprises share common management having the same corporate headquarters in Louisville, Kentucky and sharing a common chief financial officer. Craig Yarde serves as plant manager for both the assembly and the die cut facilities in Galesburg. Yarde is in overall charge of the hiring, firing and discipline at both facilities. The employees of the two facilities are subject to the same work rules and employee handbook, have the same pay system, overtime and benefits programs. The two enterprises hold themselves out to the public as one entity, "Derby Industries", utilizing that business name and using the same logo and other corporate identification.

In view of the above and the record as a whole, it is clear that for the purposes of the Act that the two enterprises should be treated as a single employer. The four factors the Board examines in finding single employer status are satisfied herein with the two companies having centralized control

of labor relations, common management, common ownership and/or financial control and interrelation of operations. See Radio v. Broadcast Service of Mobile, 380 U.S. 255 (1965); Hydrolines, Inc., 305 NLRB 416 (1991). See also NLRB v. Browning-Ferris Industries, 691 F.2d 1117, 1122 (3d. Cir. 1982). Accordingly, heretofore I will refer to Derby Enterprises, LLC and Derby Enterprises, Inc. as the Employer herein.

4/ The determination of a single-employer status does not determine the appropriate bargaining unit or resolve the unit issues raised herein. A single-employer analysis focuses on ownership, structure and integrated control of separate corporations. Consideration of the scope of the unit requires the examination of employee community of interest. Peter Kiewit Sons' Co., 231 NLRB 76 (1977); Edenaral Construction Co., 294 NLRB 297 (1989).

The Petitioner seeks to represent all full-time and regular part-time production and maintenance employees including truck driver(s) employed at the Employer's assembly facility. Contrary to the Petitioner, the Employer maintains that the requested unit is too narrow in scope and that the smallest appropriate unit would include the production and maintenance employees, including truck drivers, at both facilities. There are no issues regarding unit description except that the Employer maintains that if the assembly facility unit is found to be appropriate, the quality control inspectors employed at the assembly facility should be excluded because they do not share a sufficient community of interest with other employees employed at the assembly facility. The Petitioner maintains that the quality control inspectors (sometimes referred to as auditors on the record) employed at the assembly facility have a community of interest with the other hourly employees at that facility.

### **SCOPE OF UNIT**

As indicated above, the two facilities are approximately six and one-half miles apart within the city of Galesburg, Illinois. While the two facilities have a common plant manager, the record discloses that local supervision at the die cut facility provides supervision over the day-to-day operations of that

facility. Plant Manager Yarde is present at the die cut facility on an “as-needed” basis which amounts to approximately two to three times a week.

Becky Branson is the production supervisor at the die cut facility. She reports directly to Yarde and oversees the production and maintenance operations at the facility. In respect to hiring at the die cut facility, interviewing takes place at that facility with both Yarde and Branson conducting interviews. Similarly, in regards to discipline, Yarde and Branson are both involved in that process. Branson prepares employee evaluations for the die cut employees. Generally, both Yarde and Branson are present for the employee evaluation interview, but Branson can do them herself when necessary. All such interviews and action take place at the die cut facility.

The assembly facility employs approximately one hundred and forty-eight production and maintenance employees. The die cut facility has approximately eighteen production and maintenance employees in its employ. As indicated above, the production employees at the die cut facility are generally involved in the machining and fabrication of parts. The die cut facility utilizes various machine tools, presses, saws, and a laminator. It appears that the assembly facility operations does not involve such machinery save a small press that punches holes in plastic. The wage classifications and rates of the die cut facility employees reflect their different and higher skills contrasted to those of the assembly employees.

As indicated above, the employees at both facilities operate under the same wage rate system, overtime, probation periods and employee handbook. They enjoy the same benefit package, including a common 401(k) and health plan. It appears the Employer’s Kentucky facility also shares these common benefits and policies. Each of the facilities maintains its own seniority list; and in the case of layoffs, employees cannot “bump” from one facility to the other. There is no bidding procedure wherein employees from one facility can bid for available jobs at the other facility. Except for occasional Company picnics, there is little contact between the employees of the two facilities. Except

for limited light duty assignments and scraping functions at the die cast facility, assembly employees do not perform work at the die cast facility. It does not appear that die cast employees have any occasion to do work at the assembly facility. Each facility has its own employee meetings and provides work training to its employees. Die cast's truck driver does have contact with assembly's receiving employees, but that appears to be limited to deliveries at the assembly facility.

The record reflects only approximately eight transfers between the two operations in the past ten years. Almost all of these transfers involved management personnel or quality control inspectors. There are no instances where production employees of either operation have been transferred across operation lines. There is no evidence of temporary assignments between facilities other than that mentioned above and that of an assembly maintenance employee on a few occasions.

A number of factors bear on the unit determination in a multi-location situation. These include past bargaining history; the extent of interchange of employees; the work contacts existing among the several groups of employees; the extent of functional integration of operations; the differences, if any, in the products or in the skills or types of work required; the centralization or lack of centralization of management and supervision, particularly in regard to labor relations, the power to hire, discharge or affect the terms and conditions of employment; and the physical and geographical location in relation to each other. These factors must necessarily be weighed in resolving the unit contentions of the parties.

The general rule is that a single-plant unit is presumptively appropriate, unless the employees at the plant have been merged into a more comprehensive unit by bargaining history, or the plant has been so integrated with the employees in another plant as to cause their single-plant unit to lose its separate identity. Kendall Co., 184 NLRB 847 (1970); Kent Plastics Corp., 183 NLRB 612 (1970); National Cash Register Co., 166 NLRB 173 (1967).

With this in mind, it follows that geographic separation of plants (Capital Bakers, 168 NLRB 904, 905 (1968)); substantial authority of local management (Equitable Life Assurance Society, 192 NLRB 544 (1971)); the absence of any bargaining history on a broader basis (Transcontinental Bus Systems, 178 NLRB 712 (1969)); lack of substantial interchange or transfer of employees (Rohm & Haas Co., 183 NLRB 174 (1970)); the fact that no labor organization is seeking to represent a more comprehensive unit (Welsh Co., 146 NLRB 713 (1964); and dissimilarity of work skills (cf. Cheney Bigelow Wire Works, 197 NLRB 1279 (1972)), are factors customarily relied on. See also Bowie Hall Trucking, 290 NLRB 41 (1988); Esco Corp., 298 NLRB 837 (1990); and Executive Resources Associates, 301 NLRB 400 (1991).

In view of the above and the record as a whole, I find that the single facility presumption has not been rebutted. J & L Plate, Inc., 310 NLRB 429 (1993). While the geographic separation of the plants is only six and one-half miles and there is overall centralized labor relations control at the top level, the evidence herein does not establish that the two facilities are “so effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity.” Esco Corp., 298 NLRB 837, 839 (1990). In reaching this conclusion, I note that there is an absence of evidence showing that the facilities lack local autonomy concerning day-to-day supervision and direction of employees. J & L Plate, Inc., at p. 429. Indeed, the record indicates that the die cast production supervisor prepares employee evaluations, is involved in the hiring process and all forms of discipline, and that the joint “plant manager” is at the die cast facility only several times a week. In view of this and their separate seniority systems, layoff procedures, work training, and employee meetings, I find that each facility has a significant level of local autonomy.

I also find it significant that there is virtually no inter-facility contact between the vast majority of employees of the two plants. There is also very limited employee interchange between the facilities and no common supervision except at the highest level. The Employer cites Neodata Product



Distribution, 312 NLRB 987 (1993), maintaining that the functional integration herein is comparable to the “order flow process” found in that case and should merge the operations into one for unit purposes. I find Neodata quite different from the instant case. There, the Board found that the employees of the two facilities performed “coordinated” functions; and in performing their “coordinated” functions, the employees had “regular and frequent contact.” There is no such regular and frequent contact of employees of the two facilities herein. Moreover, the functional integration in the instant case is straight line, and there is no evidence of the kind of coordination described in Neodata. See fn. 9, Rental Uniform Service, Inc., 330 NLRB No. 44 (1999).

Finally, I note that the two plants perform altogether different functions, and the employees have different skills and utilize different machinery and equipment. See J & L Plate at p. 430. There is no previous bargaining history, and no labor organization is seeking a broader unit. Based on the foregoing facts, I find that evidence herein is insufficient to rebut the presumptive appropriateness of the single facility unit sought by the Petitioner, and I find the petitioned-for unit at the assembly plant to be appropriate. J & L Plate, *supra*; Esco Corp., 198 NLRB 837, 839 (1990).

### **QUALITY CONTROL INSPECTORS**

As indicated above, the Employer, contrary to the Petitioner, would exclude quality control inspectors (auditors) from the unit of production and maintenance employees at the Employer’s assembly facility. The Employer maintains that the inspectors should be excluded because they are directly supervised by a supervisor who reports to a manager of Derby Industries, Inc. rather than a manager of Derby Industries, LLC, and that they do not share a community of interest with other assembly employees. I disagree. As urged by the Employer, I have found that Derby Industries, Inc. and Derby Industries, LLC constitute a single employer for the purposes of the Act. Thus, the fact that the supervisor of the inspectors at the assembly facility reports to a manager of Derby Industries, Inc. has no bearing on community interest which is controlling here.

In respect to community of interest, the record clearly shows that the inspectors share a community of interest with the assembly employees in the unit found appropriate herein. The inspectors are paid on an hourly basis, work the same hours, and have the same break and lunch periods as do other assembly employees. They are involved in the inspection of the work done by the assembly facility's production employees, and have frequent contact with them in doing so. Inspector jobs are posted at the assembly facility, and generally the selections for such jobs are made from the employees within the unit found appropriate herein. Although the inspectors have their own areas for some portions of their work, they work a majority of their time on the production floor. It is undisputed that their duties are an integral part of the assembly process. See W.R. Grace & Co., 202 NLRB 788, 789 (1973); Owens-Illinois, Inc., 211 NLRB 939, 941 (1974). The inspectors have the same benefits, punch the same time clocks, and work in the same kind of attire. Accordingly, I find that the quality control inspectors share a community of interest with other assembly employees, and I include them in the unit found appropriate herein. Blue Grass Industries, Inc., 287 NLRB 274 (1987).

5/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

6/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

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